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Paper No. 3

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**OFFICE OF PETITIONS
A/C PATENTS**

In re Application of
Knaus et al.
Application No. 09/816,152
Filed: 26 March, 2001
Attorney Docket No. 031672.0004

:
: DECISION DISMISSING
: PETITION
:
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This is a decision on the petition filed on 5 April, 2001, requesting that the filing fee and extra claims fees paid in above-identified application be refunded.

The present application was filed on 26 March, 2001. The application transmittal sheet authorized the USPTO to charge counsel's deposit account, No. 50-1640, for the basic filing fee, additional claims fee, and any other required fees. Accordingly, counsel's deposit account was charged a total of \$826.00 (\$355.00 for the basic filing fee, \$351.00 for 39 claims in excess of 20, and \$120.00 for three (3) multiple dependent claims in excess of three (3) on 28 March, 2001. The papers, therefore, are entitled to a filing date of 26 March, 2001, and the \$826.00 filing fee paid in that application is the fee required by law.

37 CFR 1.26(a) reads, in part,

The Commissioner may refund any fee paid by mistake or in excess of that required. A change of purpose after the payment of a fee, such as when a party desires to withdraw a patent or trademark filing for which the fee was paid, including an application, an appeal, or a request for an oral hearing, will not entitle a party to a refund of such fee.

Section 607.02, of the Manual Of Patent Examining Procedure (Rev. 1, Sept. 1995) reads, in part, as follows:

Since 37 CFR 1.26(a) precludes refund of an application

Application No. 09/694,447

filing fee when applicant desires to withdraw an application, any request by applicant not to process or charge an application filing fee because the application was not intended to be filed must be in the form of a petition under 37 CFR 1.183 requesting suspension of the rules to the extent that the filing fee not be processed or charged. Any such petition must include the fee set forth in 37 CFR 1.17(h) and must be accompanied by an express abandonment of the application in accordance with 37 CFR 1.138. In order for such a petition to be granted, it must ordinarily be filed and acted upon prior to the date on which the application filing fee is processed or charged by the Office with regard to the application.

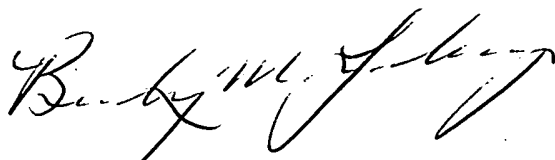
In this case, Office records show that the filing fees in Application No. 09/816,152 were charged to counsel's deposit account before the petition was filed and before the petition was acted upon. Additionally, an express abandonment was not included with the petition.

In view of the above, applicants' desire that the present application not be examined does not entitle applicants to a refund of the fees paid in the application. While the petition, in effect, requests waiver of 37 CFR 1.26(a), the Commissioner has no authority to waive requirements of the statute. The filing fee is a statutory requirement for a complete application (35 U.S.C. § 111(a)) and, if properly paid in the first instance, may not be refunded. The filing fee in this case was properly paid.

Accordingly, the petition is dismissed.

The application is being returned to the Office of Initial Patent Examination for further processing and examination in due course.

Telephone inquiries concerning this matter may be directed to Petitions Attorney Douglas I. Wood at (703) 308-6918.



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